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77-6835

Supreme Court, U.S.
FILED
SEP 18 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD WAYLAND — Plaintiff/Appellant

against

TOWN OF IPSWICH — Defendant/Appellee

MOTION TO DISMISS APPEAL

Atty. Charles C. Dalton
Town Counsel, Town of Ipswich
71 Central Street
Ipswich, Massachusetts 01938

Edward Wayland
8 Central Street
Wilmington, Massachusetts 01887

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

No. 77-6835

EDWARD WAYLAND, Appellant

vs.

TOWN OF IPSWICH, Appellee

MOTION TO DISMISS APPEAL

Appellee moves that Court dismiss the appeal herein on the following grounds:

I THIS HONORABLE COURT LACKS JURISDICTION OVER THREE OF THE FIVE ORDERS APPEALED FROM AND THE APPELLANT'S NOTICE OF APPEAL WAS NOT FILED WITHIN THE TIME ALLOWED BY LAW.

The Appellant has appealed from an order of District Court Judge Tauro (Appellant Jurisdictional Statement, Appendix F), dated June 10, 1977. There is no statutory right of appeal to the Supreme Court from this order in 28 U.S.C. and the Appellant filed his appeal on February 21, 1978, more than eight months after the order.

The Appellant has appealed for an Order of District Court Judge Tauro (Appellant Jurisdictional Statement, Appendix G), dated January 1, 1978. There is no statutory right of appeal to the Supreme Court from this order in 28 U.S.C.; the Appellant filed his appeal on February 21, 1978, more than two months after the order.

The Appellant has appealed a Memorandum and Order of U.S. Magistrate Princi, dated March 1, 1978 (Appellant Jurisdictional Statement, Appendix H). There is no statutory right of appeal to the Supreme Court from an order of a U. S. Magistrate.

The Appellant has not complied, nor made any effort to comply with Supreme Court Rule 53(1). The Appellant has not filed in the District Court, the Court of Appeals, nor in the Supreme Court, the mandatory motion for leave to proceed in forma pauperis nor the mandatory affidavit required by Supreme Court Rule 53(1). The Appellant has failed to comply with the provisions of

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28 U.S.C. 1915 at all times; the Appellant is not and has not been at any material time, indigent, and has refused to retain legal counsel to represent him although able to afford legal counsel.

In addition, the Appellant has not specified the statutes under which he has taken the five appeals to the Supreme Court in Appellant's Notice of Appeal, as required by Supreme Court Rule 10.2.

II NO FEDERAL OR STATE STATUTE WAS DECLARED UNCONSTITUTIONAL BY THE COURT OF OF APPEALS ORDER.

The dismissal of the Appellant's Complaint by the District Court (Appellant Jurisdictional Statement, Appendix G) did not declare any state or federal statute unconstitutional.

The Appellant's Amended Complaint (Brief, Appendix A) clearly seeks that the Court hold the Appellee vicariously liable for the unconstitutional acts of the Chief of Police and five police officers under 42 U.S.C. 1983 and 1985. No other grounds for relief against the Appellee are alleged. The Appellant is not entitled to such relief as a matter of law; the Complaint was therefore properly dismissed. Kosta v. Hogg 560 F2 37 (First Cir. 1977), Monell v. New York City - U.S. - No. 75-1914, dec. 6-6-78.

The Appellant's Jurisdictional Statement states that he is appealing the alleged denial of a jury trial, an alleged "Bill-of-Attainder", denial of vicarious liability of the Appellee because of actions of police officers and Town Counsel (p. 1,2). The jurisdictional grounds and "questions presented" by the Appellant have no relation to the First Circuit Court of Appeals Order (Appellant's Jurisdictional Statement, Appendix K).

III IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE MEMORANDUM AND ORDER OF THE FIRST CIRCUIT COURT OF APPEALS IS BASED ARE SO INSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

The Order of the Court of Appeals (Appellant's Jurisdictional Statement, Appendix K) rules that:

(A) the Appellant's Complaint under 42 U.S.C. 1983 and 1985 was properly dismissed by the district court;

(B) the Appellant will not be permitted to proceed with the appeal in forma pauperis; and

(C) the Appellant will not be given an enlargement of time to file his brief.

The Appellant's Jurisdictional Statement does not address orders (B) and (C) of the Court of Appeals at all. The question of the timeliness of an appeal of a district court judgment is governed by Rule 4 of the Federal Rules of Appellate Procedure; the question of the ability of an appealing litigant to

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proceed in forma pauperis in the appeal of a district court judgment is governed by Rule 24 of the Federal Rules of Appellate Procedure. In both instances, the proper forum for the presentation of such motions (and affidavit) is the district court, not the Court of Appeals. The Appellant while able to afford legal counsel, chose to proceed pro se at all times. Procedural failures of such insignificance should not justify review by the Supreme Court.

In regard to the substantive issue - the failure to state a legally tenable claim for relief against a municipality under 42 U.S.C. 1983 and 1985 - a reading of the "Plaintiff's Bill of Complaint Amended" and "Statement of Facts" (Jurisdictional Statement, p. 2 and 3) clearly shows that the Appellant alleges only negligence against the Town (Complaint, Paragraph 5(A) and 5(C) in the employment of certain municipal personnel. In the segment of the Jurisdictional Statement entitled "Vicarious Liability" (p. 5-7), the Appellant sets forth the conceptual framework of his Complaint against the Town. In essence, the Appellant seeks punitive damages on the basis of respondeat superior, the existence of an agency relationship, that of traditional master-servant, between the Town and five police officers and the Town Counsel. It is clear as a matter of law that such vicarious liability is not legally recognized in these Civil Rights Actions.

> ...Local governing bodies, therefore, can be sued directly under #1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other #1983 "person", by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels...
>
> On the other hand, the language of #1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality can not be held liable solely because it employs a tortfeasor - or in other words, a municipality cannot be held liable under #1983 on a respondeat superior theory. Monell v. New York City No. 75-1914 46 Law Week 4569, 4578 (1978).

The issues raised by the Appellant's Claim of Appeal, as set forth at length in the Jurisdictional Statement, raises no substantial questions of Constitutional, statutory, or procedural law.

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CONCLUSION

For the reasons stated above, the Appellant's Appeal should be dismissed.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Edward Wayland	:	
v	:	CIVIL NO. 76-3467-T
Town of Ipswich, Mass.	:	

PLAINTIFF'S BILL OF COMPLAINT AMENDED

Comes now the Plaintiff, Edward Wayland, complains that agents for and of the Town of Ipswich, namely: Armand Brouillette (Chief of Police), Peter Foote, Charles D. Surpitski, and two unknown officers have deprived the Plaintiff of many Civil Rights guaranteed by the Constitution of the United States. Said officers subjected the Plaintiff to threats, false arrest, assault and battery, illegal search and seizure; deprived the Plaintiff of equal protection under the law; and sundry other actions of misconduct under the color-of-law. For these actions the Town of Ipswich is responsible and liable.

1. The Plaintiff, Edward Wayland, is a citizen of the United States ofl Ameriea, and is a resident of Ipswich, Essex County, Commonwealth of Massachusetts.

2. The Town of Ipswich, Essex County, Commonwealth of Massachusetts is herein named Defendant.

3. Jurisdiction is granted to this Court by and under provisions of Civil Rights Act 42 U.S.C.S. 1983, 1985;
28 U.S.C. 1331, 1343;
18 U.S.C. 241, 2236;
Amendments 1, 2, 4, 5, 6, 9, 10, 14.

4(a) The Defendant, Town of Ipswich, employed Armand Brouillette, Peter Foote, Charles D. Surpitski, and two unknown officers on May 20, 1976, and after, when the

misconduct and wrongdoing deprived the Plaintiff of his constitutional rights.

(b) When the Plaintiff, Edward Wayland, went to the assistance of Marie McMahon, who was under arrest at the Ipswich Police Station for allegedly firing at (bad) naéghbors, three questionable sisters, the Plaintiff was threatened, held against his will, searched illegally, his vehicle was searched, and he was forced to drive 5 miles to his home where two handguns were illegally seized. Then, days later, he was falsly charged with Criminal Motor Vehicle violation of which he was found not guilty. All misconduct actions were done with extreme hostility and malice.

(c) The Police Department refused to investigate the counter-claims and countercharges made by the Plaintiff, Edward Wayland; further depriving Plaintiff of equal protection under the law; wilfully suppressed favorable evidence.

5(a) The Defendant, Town of Ipswich, is responsible for the actions of employed personell, and all those acting as agent. The position of "Chief of Police" is agent for the Town of Ipswich.

(b) The Plaintiff avers the common trugh: educationand competence are not the same thing; that an educated incompetent is the most dangerous, and a menace; expecially when the incompetence is compounded with willful and extreme malice.

(c) The Defendant, Town of Ipswich, is negligent to have employed incompetent or other in a position of power where misconduct and wrongdoing can, and did, create havoc and much damage to the Civil Rights of the Plaintiff, Edward Wayland, without proper and adequate safeguards for the protection of the citizen.

6(a) Separate action has been taken against the named wrong-doers in that pursuant to Civil Rights Act misconduct under color-of-law deprives them of the lawful protection of the Defendant, Town of Ipswich.

(b) Plaintiff, Edward Wayland, denies the Constitutionality as Obviously Unconstitutional, the Sections of the Motor Vehicle, and Mass. Firearms Statutes under which these wrondoeas acted.

7(a) The Criminal charges brought by the Defendant, Town of Ipswich, have caused the Plaintiff, Edward Wayland, large expenses, heavy losses, damage and defamation of his

of his character, and permanently scarred by an undeserved Criminal Record for which the Plaintiff, Edward Wayland is seeking $500,00.00 in damages, exemplary damages, plus costs and expenses.

(b)Punitive damages are not costs nor expenses; and are allowed by the Court. The Plaintiff, Edward Wayland, is seeking $5,000,000.00 in punitive damages.

8. Plaintiff, Edward Wayland, demands Jury Trial, pursuant to Rule 38 of the Federal Rules of Civil Proceedure.

WHEREFORE Plaintiff prays:

1. That this Honorable Court order the Town of Ipswich, and all others subject, be forthwith restrained from further harassment of the Plaintiff; and that they be restrained from depriving the Plaintiff of any of his Constitutional Rights.
2. That this Honorable Court order Defendant, Town of Ipswich to pay $500,000.00 in damages, exemplary damages and all costs and expenses.
3. That the Defendant, Town of Ipswich, be assessed and ordered to pay $5,000,000.00 in punitive damages.
4. And such other relief as this Court may deem proper.

Edward Wayland pro se
forma pauperis

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Calabrese v Chuimento (1944 DC N.J.) 3 FRD 435

(5) "A complaint is not to be dismissed because the plaintiff has misconceived proper legal theory of the claim; it is sufficient if it shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief."
Jenkins v Fidelity Bank (1973 DC Pa) 365 F Supp 1391

(6) "Under the requirement that the pleadings set out a short and plain statement of the claim showing that pleader is entitled to relief it is not necessary to set out the legal theory on which the claim is based but it is enough that the facts alleged support a legal basis for relief."
Sherwin v Oil City Nat. Bank (1955 DC Pa) 18 FRD 188, aff'd (CA3) 229 F2d 835

(7) "It suffices to plead conclusions, whether of fact or of law, provided the complaint is sufficiently definite so as to give fair notice to the opposite party of the precise nature of the claim."
Mails v Kansas City Public Service Co. (1948 DC Mø)0 51 F Supp 562

(8) "The pleader is only required to disclose adequate information as the basis of his claim for relief and not his evidence."
Greater Valley Terminal Co. v Peltz St. Terminals Inc. (1957 DC Pa) 21 FRD 167

(9) "The proper procedure used to attack a pleading that is vague and ambiguous is by motion for more definite statement and not by motion to dismiss."
Fedorchak v Montgomery Ward (1955 DC Pa) 18 FRD 1

(10) "Under this rule (11) pleading should not be stricken merely because it is argumentative."
Murchisón v Kirby (1961 DC N.Y.) 27 FRD 14

Signed under penalties of perjury.

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